

FILED
Fourth Judicial District Court
of Utah County, State of Utah
10/6/11 Mr Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH**

<p>HIGHLANDS AT JORDANELLE, LLC, a Utah limited liability company,</p> <p>Plaintiff,</p> <p>v.</p> <p>WASATCH COUNTY, <i>et al</i>,</p> <p>Defendants.</p>	<p>RULING RE: WASATCH COUNTY'S MOTION TO LIMIT THE SCOPE OF REFUND AWARDS</p> <p>Case No. 080500390</p> <p>Judge Fred D. Howard</p>
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This matter comes before the Court on Defendant Wasatch County's (hereafter "the County") Motion to Limit the Scope of Refund Awards, filed July 27, 2011. Plaintiff filed a Memorandum in Opposition to the County's Motion on August 12, 2011. Plaintiff subsequently filed an Amended Memorandum in Opposition on August 19, 2011, to which the County Replied in Further Support of its Motion on September 9, 2011. The County filed a Request to Submit for Decision on the same date, in which it requested a hearing on the issue.

Having reviewed the parties' briefs, being fully advised in the premises, and good cause appearing, the Court now makes the following Ruling:

RULING

Plaintiff filed a Motion for Partial Summary Judgment regarding the Refund of Lump

Sum Fees on May 6, 2011. The Fire District Filed a Memorandum in Opposition, which was joined by the County. Plaintiff submitted a Request for Decision on June 10, 2011, and oral argument was heard on July 15, 2011. At the hearing, the Court issued a bench ruling on the Motion for Partial Summary Judgment in favor of Plaintiff, awarding a refund against both the County and the Fire District. In its Motion to Limit the Scope of the Refund Award, the County essentially asks this Court to re-visit and amend its prior ruling. The Court is unwilling to do so.

As described by Plaintiff in its Amended Memorandum in Opposition, the County's Motion is "an attempt to take a second bite at the apple." However, Plaintiff's "waiver" argument is not the basis for the Court's decision on this current Motion. Rather, the Court agrees with Plaintiff's contention that there exists sufficient evidence to impose direct liability on the County.

The County is correct in its assertion that the Fire District is a legally distinct entity from the County itself. "The District was established [by the County] pursuant to Wasatch County Resolution 87-7." Wasatch County Code § 6.01.05(8). However, the County, as the "governing body" of the Fire District, is the entity that actually adopted the resolution. Utah Code Ann. § 11-42-201(1)(a) ("a governing body of a local entity intending to levy an assessment . . . shall adopt a resolution or ordinance designating the assessment area"). Before adopting such a resolution, the "governing body" is also required to "give notice," "receive and consider all protests filed," and "hold a public hearing" on the issue, all of which the County did here. Utah Code Ann. § 11-42-201(2)(a)-(c). The Fire District certainly benefitted therefrom, but as a local

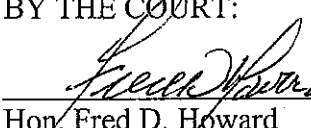
entity, it does not have authority to act in and of itself. *See* Utah Code Ann. § 11-42-103 (a local entity must be expressly authorized to provide improvement or service).

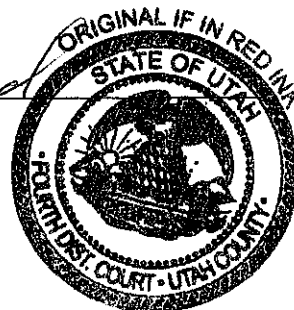
The County also attempts to deflect liability by arguing that its actions were “not unusual” and statutorily required. However, an act need not be unusual to impose liability, and the County’s statutory obligations with respect to enforcement and collection do not negate the pivotal fact that it voluntarily adopted the Resolution.

The Court was aware of the respective positions and contributions of the County and the Fire District when it made its prior ruling, and the imposition of liability upon both was premeditated and purposeful. For these reasons, the Court will not reconsider its prior ruling. Accordingly, the Motion to Limit the Scope of Refund Awards is respectfully denied. Counsel for Plaintiff is instructed to prepare an Order consistent with this Ruling.

DATED this 5th day of October, 2011.

BY THE COURT:


Hon. Fred D. Howard
District Court Judge



CERTIFICATE OF DELIVERY

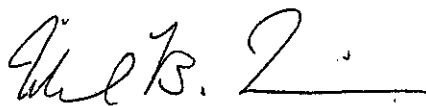
I certify that true copies of the foregoing Ruling were mailed, postage prepaid, on the 6 day of October, 2011 to the following at the addresses indicated:

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